IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1945 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

G T PATEL

Versus

DIRECTOR OF EMPLOYEES STATE INSURANCE SCHEME

Appearance:

MR S R Brahmbhatt for Mr. BP TANNA for Petitioner

Mr. V.B.Gharania, AGP for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/11/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the removal order dated 4.2.85 passed by the respondent no. 2 removing the petitioner from the post of Store Officer Class III, Central Medical Stores Employees State Insurance Scheme, Ahmedabad with effect from 4th February, 1985. Five charges were framed against the petitioner vide order dated 23.2.83. An

inquiry was conducted and in respect of those five charges and the Inquiry Officer came to the conclusion that charge nos. 2 and 4 were not proved against the petitioner, while in respect of charge nos. 1,3 and 5, he held that the petitioner delinquent had not taken the matter seriously and to that extent, he has shown negligence. However, that negligence was held not deliberate as to help Mr. Marfatia indirectly. The following are the charge nos. 1 to 5 levelled against the petitioner.

(1) Eventhough it had come to your notice in September, 1980 in respect of the less quantity as well as about non-receipt of the quantity of goods from Marfatia Bharatkumar Co., instead of not intimating the said facts to the Head Office immediately, the same has been intimated on 21.10.80. Thus, avoidable delay has been there in not intimating the same to Head Office in time and thereby you have shown carelessness in discharging your duties as a result of which the Government has suffefred financial loss/damage.

(2) Eventhough a decision for filing the police case has been taken on 16.10.80, you have indirectly assisted/helped the Marfatia by issuing receipt for an amount of Rs.33056.00 on 24.10.80 for getting released thegoods and due to the said reason, the Government have suffered financial loss/damage.

(3) That vide letter dated 13.11.80 you had forwarded the statement of the outstanding/due receipts to the Head Officer, but by not making a mention in respect of the goods in respect of the receipt for Rs. 33056.00 you have knowingly suppressed this information from the Head office and thereby provided convenience to the Marfatia in misappropriating the goods and caused financial loss/damage to the Government.

(4) That in regard to non-receipt of full goods as well as completely nil goods in connection with the Railway receipt nos. 117790 and 117793 dated 25.8.80 you have shown serious slackness in regard to making inquiries with Railways and committed avoidable delay and thereby indirectly helped/assisted the Marfatia in misappropriating the said goods.

(5) That eventhough you were having knowledge about

less receipt of goods and also completely non-receipt of goods from the Marfatia and even after the issuance of written instructions from the Head Office, you have not filed any police case between between 1.9.80 till 16.11.80.

The deciplinary authority passed the order dated 4th February, 1985 removing the petitioner from his post in view of the departmental inquiry report dated 30th January, 1984.

2. The learned counsel for the petitioner submitted on the merits of the case that it is a case where the findings are based on no evidence and no prudent person can come to the conclusion as held by the Inquiry Officer.

3. I have heard the learned counsel for the parties and have also perused the relevant papers on record. The respondents have not filed any affidavit in reply. The petitioner was appointed as a Pharmacist in the year 1964 in the office of the respondent no.1. Thereafter, he was promoted as Chief Pharmacist in the year 1974 and then in the year 1976, he was promoted as a Stores Officer. While the petitioner was holding charge of Stores Officer Class III, Central Medical Stores, Employees State Insurance Scheme, he was also given the additional charge to attend other places where the stores were situated namely (1)New Mental Hospital (2) Balia Limdi (3) Rajpur Hirpur. The distance of these three places from Income-tax office is 7 kms., 2 kms. and 5 kms. respectively and from Rajpur the distance is 12 kms. and the petitioner was requird to visit these three stores from time to time daily and rest of the half day,the petitioner was required to remain present at ESIC Bhavan, Income-tax, Ashram road, Ahmedabad as he was the Store Officer in charge of ESIC Bhavan. It is also pointed out by the learned advocate for the petitioner that one Dhobaria who was stores in charge was to resume his duty on 2nd November,1980,but he did not report for duty and the petitioner was orally directed to continue to hold the charge of Shri Dhobaria. As the petitioner was given the charge only for two months upto 31.10.80, and the petitioner was orally directed to hold the additional charge till Shri Dhobaria resumed his duty. Ultimately, on 16.11.80, Dhobaria reported for duty and then the petitioner was communicated by a letter dated 18.11.80 that he should hold additional charge between 1.11.80 to 16.11.80 ex-post-facto in place of Shri Dhobaria. It is also contended by the learned advocate

for the petitioner that the petitioner delinquent has not attended the matter with due importance with which it could have been attended and to that extent some negligence could be attracted to him, meaning thereby that the petitioner should have been much more careful regarding his duties and he could not do so. It is only a negligible mistake and that would not amount to misconduct at all. Regarding charge no. 3, the submission of the learned counsel for the petiioner is that the charge of deliberately helping Marfatia in misappropriation and in not enabling the head office, has not been proved and the petitioner should have been shown some care in verifying the details and to that extent it was stated that he had not taken proper care. In respect of charge no. 5, it is observed by the Inquiry officer that in the past Marfatia was in habit of sending the goods intermittently and he has not given any written instructions to file a police complaint till 3.10.80, and thereby the Inquiry Officer inferred that the petitioner had not taken the matter seriously and to that extent,he was held liable for the negligence. The learned counsel for the petitioner submitted that the petitioner was holding the charge as Stores Officer. Statements were prepared by the Junior Clerks and those statements were verified by the Senior Clerks and then the petitioner signed those statements and the petitioner has not taken due care in signing those statements. That is the finding of the Inquiry Officer. In case, the petitioner was holding charge of three places, and he had to attend half day at his original post place, it was too difficult for him to verify different facts with care more than required and even then the petitioner, after coming to the conclusion, some mischief has been committed, that has been committed by Marfatia,the petitioner had filed a complaint before the Court of law within 2.1/2 months. As such, the submission of the learned advocate for the petitioner is that the petitioner has not committed any misconduct in the eye oflaw. Even if it is a misconduct, it would amount to misconduct in technical sense and not in actual meaning of term "misconduct".

4. In the case of B.C.Chaturvedi vs. Union of India reported in 1996(1) SCC, 484, principles have been laid down regarding judicial review which could be exercised by the High Court under Article 226 of the Constitution. Paras-12 and 18 of the said judgment read as under:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Powever of Judicial review is

meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts tht evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice orin violation of statutory rules prescribing the mode of inquiry of where the conclusions of findings reached by the disciplinary authority is based on no evidence. If the conclusions or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

"18.A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the

> appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof."

4. It is true tht this Court cannot go into the findings of facts nor can re-assess the evidence as a court of appeal. This Court can only exercise judicial review in exercise under Article 226 of the Constitution where the authority had held proceedings against the delinquent officer in the manner inconsistent with the rule of natural justice or in violation of statutory rules prescribing mode of inquiry where conclusions or findings reached bythe disciplinary authority are based on no evidence or no reasonable and prudent person would have reached such a finding as arrived at bythe disciplinary authority. This Court, while exercising powers of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty,but the penalty imposed by the disciplinary authority shocks the conscience of the Court, it would appropriately mould the relief either directing the disciplinary authority to reconsider the panalty imposed or in certain circumstances in exceptional cases, it can mould the relief also. This is a case where disciplinary authority appears to have not applied its mind on the evidence or the facts and circumstances at all. Even it does not show that the disciplinary authority has seen the inquiry report and consider even the conclusions, but the Court cannot interfere with the findings on this score as it will be presumed that the disciplinary authority has passed the order concurring the findings of the inquiry officer.

5. It appears from the facts and circumstances of this case that the petitioner has not applied much more due diligence and care when he signed the statement which was prepared by the junior clerk and verified by the senior clerk and he has not reported the matter to the police within 2.1/2 months. It is not a case of the department that the petitioner has initiated legal proceedings against Marfatia when he was directed by any superior authority. It appears that some delay might be due to heavy work as 3 to 4 places where he was working, he might not have personally checked statements which were already checked by the senior clerk and endorsed by him. It is only a negligible mistake which

cannot amount to serious misconduct in strict sense. For that purpose,certainly this Court feels that the punishment of removal awarded by the punishing authority is shocking and disproportionate when petitioner's act does not amount to misconduct in strict sense.

6. Accordingly, the order of punishment is liable to be set aside and the petition deserves to be allowed.

7. The petition is allowed. The impugned order dated 4th February, 1984 passed by the respondent no. 1 Director of Medicical Services, ESI Scheme, Ahmedabad removing the petitioner from service is hereby quashed and aside. The respondents are directed to reinstate the petitioner in service to his original post with full back wages and arrears of pay and all other consequential benefits. The respondents are at liberty to award any minor punishment to the petitioner in accordance with law. Rule is made absolute accordingly with no order as to costs.

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